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By: Maisie C. Livengood  
Maisie C. Livengood

PATENT  
Attorney Docket No.: 019934-001710US  
Client Ref. No.: T001710US

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TECH CENTER 1600/2900

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Thomas J. Schall et al.

Application No.: 09/919,224

Filed: July 30, 2001

For: IMMUNOLOGIC ACTIVITIES  
OF RHESUS  
CYTOMEGALOVIRUS  
ENCODED IL-10 (AMENDED)

Examiner: Michail A. Belyavskyi

Art Unit: 1644

RESPONSE TO ELECTION OF SPECIES

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Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

This paper is filed in response to the Office Communication mailed March 24, 2003. The original deadline for response was April 24, 2003. A petition for a one month extension of time is enclosed, which extends the deadline for response until May 24, 2003. Accordingly, this response is timely filed.

The Office Communication requires Applicants to make three separate species elections. In response, Applicants make the following species elections without traverse:

Specific method of preventing or treating a specific immune disorder selected from the disorders listed in claim 24: Method of treating graft-versus-host disease is elected. Claims 21-32, 36-37, 44-48, 50-61 read on this elected species.

Application No. 09/919,224  
Amendment dated May 1, 2003  
Reply to Office Communication of March 24, 2003

Specific method of treating a chronic inflammatory disease from the disorders listed in claims 33 and 49: Method for treating rheumatoid arthritis is elected. Claims 21-28, 31-33, 44-61 read on this elected species.

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Specific method of preventing or treating an immune disorder when patient is suffering from a type TH1 immune response due to transplantation of an organ selected from those listed in claim 37: Method of treating a patient suffering from a TH1 immune response due to transplanted bone marrow is elected. Claims 21-32, 36-37, 44-48, 50-61 read on this elected species.

Thus, claims 21-28, 31-32, 44-48 and 50-61 read on the collected species elections.

In making these elections of species, it is Applicants' understanding that the Office will follow the procedure set forth in MPEP §809.02(c), which provides for a complete action on the merits of all claims readable on the elected species, and in MPEP §803.02, whereby upon the finding of allowable species, examination will continue with the non-elected species until all species have been examined or prior art is identified which renders the claims unpatentable.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Scott L. Ausenhus  
Reg. No. 42,271

TOWNSEND and TOWNSEND and CREW LLP  
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DE 7102206 v1



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16448 PTO/SB/21 (03-03)

Approved for use through 04/30/2003. OMB 0651-0031  
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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SN21TE869873

<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/919,224	
	Filing Date	July 30, 2001	
	First Named Inventor	Schall, Thomas J.	
	Art Unit	1644	
	Examiner Name	Michail A. Belyavskiy	
Total Number of Pages in This Submission	1	Attorney Docket Number	019934-001710US

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment/Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input checked="" type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): Return Postcard Response to Election of Species

Remarks

The Commissioner is authorized to charge any additional fees to Deposit Account 20-1430.

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual	Townsend and Townsend and Crew LLP Scott L. Ausenhus Reg. No. 42,271
Signature	
Date	May 1, 2003

CERTIFICATE OF MAILING

Express Mail Label: EL 889383172 US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with "Express Mail Post Office to Address" service under 37 CFR 1.10 on this date May 1, 2003 and is addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231	
Typed or printed name	Maisie C. Livengood
Signature	
Date	May 1, 2003

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

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# FEE TRANSMITTAL for FY 2003

Effective 01/01/2003. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 55

Approved for use through 04/30/2003. OMB 0651-0032  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE  
Complete if known

Application Number 09/919,224  
Filing Date July 30, 2001  
First Named Inventor Schall, Thomas J.  
Examiner Name Michail A. Belyavskyi  
Art Unit 1644  
Attorney Docket No. 019934-001710US

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## METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit Card ☐ MoneyOrder ☐ Other ☐ None

☒ Deposit Account:

Deposit  
Account  
Number

20-1430

Deposit  
Account  
Name

Townsend and Townsend and Crew LLP

The Commissioner is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments  
☒ Charge any additional fee(s) during the pendency of this application  
☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

## FEE CALCULATION

### 1. BASIC FILING FEE

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1001	750	2001	375	Utility filing fee
1002	330	2002	165	Design filing fee
1003	520	2003	260	Plant filing fee
1004	750	2004	375	Reissue filing fee
1005	160	2005	80	Provisional filing fee

Fee Paid

SUBTOTAL (1)

(\$ )

### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

Total Claims	Extra Claims	Fees from below	Fee Paid
Independent Claims	** =	X	
Multiple Dependent	X		

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	84	2201	42	Independent claims in excess of 3
1203	280	2203	140	Multiple dependent claim, if not paid
1204	84	2204	42	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2)

(\$ )

\*\*or number previously paid, if greater; For Reissues, see above

## FEE CALCULATION (continued)

### 3. ADDITIONAL FEES

Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	55
1252	410	2252	205	Extension for reply within second month	
1253	930	2253	465	Extension for reply within third month	
1254	1,450	2254	725	Extension for reply within fourth month	
1255	1,970	2255	985	Extension for reply within fifth month	
1401	320	2401	160	Notice of Appeal	
1402	320	2402	160	Filing a brief in support of an appeal	
1403	280	2403	140	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,300	2453	650	Petition to revive - unintentional	
1501	1,300	2501	650	Utility issue fee (or reissue)	
1502	470	2502	235	Design issue fee	
1503	630	2503	315	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Petitions related to provisional applications	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	750	2809	375	Filing a submission after final rejection (37 CFR § 1.129(a))	
1810	750	2810	375	For each additional invention to be examined (37 CFR § 1.129(b))	
1801	750	2801	375	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) \_\_\_\_\_

\*Reduced by Basic Filing Fee Paid SUBTOTAL (3)

(\$)55

## SUBMITTED BY

Complete (if applicable)

Name (Print/Type)

Scott L. Auserhus

Registration No. (Attorney/Agent)

42,271

Telephone

303-571-4000

Signature

*Scott Auserhus*

Date

May 1, 2003

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

This collection of information is required by 37 CFR 1.17 and 1.27. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. DE 7103147 v1